

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On its Own Motion	:	
	:	
-vs-	:	Docket No. 12-0132
	:	
MidAmerican Energy Company	:	
	:	
Evaluation of MidAmerican Energy Company	:	
Energy Efficiency Programs	:	

**INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding. Staff proposes three alternative recommendations based in part on slightly different interpretations of Section 8-408 of the Illinois Public Utilities Act ("Act"), so that the Commission can make a determination as to whether MidAmerican Energy Company's ("MEC" or "MidAmerican" or the "Company") energy efficiency ("EE") programs should be continued beyond calendar year 2012. (220 ILCS 5/8-408)

I. Background

MidAmerican is a multi-state jurisdictional utility that has offered electric and gas energy efficiency programs in Iowa since 2001. MidAmerican serves the bi-state area of the Quad Cities, which is a single metropolitan marketing area with substantial populations

in both Iowa and Illinois. Senate Bill 0215 was introduced in the 95th General Assembly to enable MidAmerican to offer its Iowa EE programs, shown to be cost effective, to its Illinois customers. The bill was enacted as Public Act 95-0660. In accordance with the legislation, MidAmerican was permitted to submit a pilot EE plan in the manner prescribed by Section 8-408 of the Act. Specifically, Section 8-408(a) allows MidAmerican to seek approval from the Commission of an EE plan that would offer the same or comparable programs to those MidAmerican offers to its Iowa customers to its Illinois customers. Section 8-408 directs the Commission to approve all such programs when the petitioner demonstrates that they are cost effective. And, with regard to EE programs targeted at low-income customers, it requires Commission approval of such programs when they are found to be reasonable, even if they have not been shown to be cost effective. It further provides that if MEC submits with its pilot EE plan filing an order from the Iowa Utilities Board ("IUB") finding such programs to be cost effective, or reasonable, with regard to low-income programs, that is sufficient demonstration that the programs are cost effective or reasonable for MidAmerican's Illinois customers.

On February 13, 2008, MidAmerican filed its verified petition and supporting testimony and exhibits seeking approval of its pilot EE plan pursuant to Section 8-408 of the Act and it filed its verified petition seeking waivers of the requirements in 83 Ill. Adm. Code 410.210(a)(3)(E) and 500.330(a)(1)(B)(v). In the latter petition, MidAmerican sought permission to allow it to add the EE rider amounts to the delivery charge on customer bills, as opposed to having those amounts appear as line items on those bills. These two filings were consolidated in Docket Nos. 08-0107/08-0108 (Consol.) ("Pilot Plan docket"). On March 17, 2008, MidAmerican filed an amended EE pilot plan with revised testimony and

exhibits. On May 21, 2008, the Commission entered an Order in Pilot Plan docket ("Pilot Plan Order") finding that MidAmerican had established that its EE Plan met the filing requirements of Section 8-408 of the Act, and the Commission approved MidAmerican's Pilot EE Plan. The Commission also authorized MidAmerican's tariffs to become effective on June 1, 2008 to recover reasonable EE costs that are prudently incurred in connection with MidAmerican's EE programs for Illinois customers.

In a Staff Report dated February 14, 2012, the Commission's Energy Division Staff described the statutory and regulatory basis for initiating a proceeding to evaluate MEC's pilot EE programs and whether they should be continued beyond calendar year 2012. As detailed in the Staff Report, pursuant to Section 8-408(d) of the Act, the Commission is required to make a determination by October 31, 2012 as to whether the EE programs should be continued beyond calendar year 2012. Section 8-408 requires that the "Commission shall also file a written report with the General Assembly... detailing the results of the energy efficiency programs, including energy savings, participation numbers, and costs." As noted in the Staff Report, Staff believed that an independent impact evaluation¹ would be necessary in order for the Commission to have credible estimates of energy savings and cost-effectiveness to report to the Illinois General Assembly pursuant to Section 8-408(d). As detailed in the Staff Report, MidAmerican had filed annual status reports regarding its Illinois pilot EE programs with the Commission in the Pilot Plan docket. In January of 2012, MidAmerican first conducted (and had informally provided to

¹ The Staff Report indicated that the impact evaluation would include, but not be limited to, verification of energy savings for the Illinois EE programs, including net-to-gross interviews and on-site measurement and verification work for large nonresidential projects.

Staff) a cost-effectiveness analysis using its own estimates of energy savings for the years 2009, 2010, and 2011 of its Illinois EE pilot program implementation. (*Tr.*, August 16, 2012, p. 21) As of the date of the Staff Report, MidAmerican had not provided the Commission with any review by an external evaluator of the net benefits of MidAmerican's pilot EE programs to Illinois customers.

In the Commission's Order initiating this proceeding ("Initiating Order"), the Commission indicated how it would evaluate whether MEC's EE programs should be continued beyond 2012. In particular, the Initiating Order provides that the Commission believes it is "most reasonable" for MEC to be required to show that its EE programs are providing net benefits to Illinois ratepayers. (Initiating Order, pp. 1-2) The Commission also directed "that MEC shall provide, within the time constraints of this proceeding, such an impact evaluation as recommended by Commission Staff." (*Id.*) MEC filed a preliminary independent impact evaluation on May 25, 2012. In addition, MEC filed a cost-effectiveness analysis (MEC Ex. 2.1) that it performed based on the preliminary results from the independent impact evaluation on May 25, 2012. On August 14, 2012, MEC filed a final impact evaluation report (MEC Revised Ex. 2.2) in this docket. MEC has not filed a revised cost-effectiveness analysis based on the final impact evaluation results in this proceeding.

On June 4, 2012, the Administrative Law Judge ("ALJ") assigned to this proceeding held a preliminary hearing and established a schedule for the submission of pre-filed testimony, hearings, and briefs. (*Notice of Continuance of Hearing and Notice of Schedule*, June 4, 2012)

At the August 16, 2012 evidentiary hearing, Jennifer Hinman, Economic Analyst in the Policy Division, testified on behalf of Staff. Ms. Diane C. Munns, Vice President of Regulatory Relations and Energy Efficiency, and Mr. Charles B. Rea, Manager of Regulatory Strategic Analysis, testified on behalf of MEC.

After an overview of the legal standard at issue in this proceeding, this Initial Brief ("IB") summarizes Staff's overriding concern regarding ensuring MEC's Illinois ratepayers receive net benefits from the programs they are funding. Next, this IB sets forth several options for the Commission's consideration. Staff is proposing several alternative recommendations, with respect to the issue of whether MEC's EE programs should be allowed to continue under Section 8-408 after December 2012. However, Staff's preferred alternative is Recommendation (3). Finally, this IB includes a summary of Staff's recommendations to the Commission in the event the Commission chooses to adopt an alternative that involves extending MEC's EE programs for a year.²

A. Legal Standard

Subsections (a) and (d) of Section 8-408 of the Act state as follows:

(a) Any electric or gas public utility with fewer than 200,000 customers in Illinois on January 1, 2007 that offers energy efficiency programs to its customers in a state adjacent to Illinois may seek the approval of the Commission to offer the same or comparable energy efficiency programs to its customers in Illinois. For each program to be offered, the utility shall submit to the Commission:

(1) a description of the program;

² MEC requests a sixth year extension of the pilot EE programs to the end of 2013. (MEC Ex. 1.0, p. 10)

- (2) a proposed implementation schedule and method;
- (3) the number of eligible participants;
- (4) the expected rate of participation per year;
- (5) the estimated annual peak demand and energy savings;
- (6) the budget or level of spending; and
- (7) the rate impacts and average bill impacts, by customer class, resulting from the program.

The Commission shall approve each program demonstrated to be cost-effective. Programs for low-income customers shall be approved by the Commission even if they have not been demonstrated to be cost-effective if they are demonstrated to be reasonable. An order of the State agency that regulates the rates of the utility in the adjacent state that finds a program to be cost-effective or reasonable shall be sufficient to demonstrate that the program is cost-effective or reasonable for the utility's customers in Illinois. Approved programs may be delivered by the utility or by a contractor or agent of the utility.

(d) A public utility that offers approved energy efficiency programs in the State may do so through at least December 31, 2012. The Commission shall monitor the performance of the energy efficiency programs and, on or before October 31, 2012, the Commission shall make a determination regarding whether the programs should be continued beyond calendar year 2012. The Commission shall also file a written report with the General Assembly explaining the basis for that determination and detailing the results of the energy efficiency programs, including energy savings, participation numbers, and costs.

(220 ILCS 5/8-408(a) and (d))

II. Argument

A. Summary: Ensuring Benefits to Ratepayers

The critical sentence in Section 8-408(a) governing approval of the EE programs is the requirement that "The Commission shall approve each program demonstrated to be cost-effective." (220 ILCS 5/8-408(a)) Section 8-408 directs the Commission to approve all such programs when the petitioner, MEC, demonstrates that they are cost-effective (or reasonable for low income programs). The statute also provides that an Order from another state agency, the IUB, finding such programs to be cost-effective, or reasonable, with regard to low-income programs, is "sufficient to demonstrate that the program is cost-effective or reasonable for the utility's customers in Illinois." (220 ILCS 5/8-408(a)) Staff's ultimate concern is that Illinois ratepayers should receive net benefits from each of the Company's programs, since they pay for the cost of the programs in rates. Staff has found that a finding by the IUB is insufficient to demonstrate the program is cost-effective for the utility's customers in Illinois.

B. Options for the Commission's Consideration

1. Recommendation (1): Subsection (a) is the only EE plan approval provision that may be used under Section 8-408 of the Act.

In the event that the Commission determines that subsection (a) is the only EE plan approval provision that may be used under Section 8-408 of the Act, instead of subsection (d) upon which this proceeding was initiated (Recommendation (3)) (Staff Ex. 1.0, pp. 3, 11-13; Staff Ex. 2.0, p. 14), Staff would propose that the Commission adopt its Recommendation (1).

Staff is unsure about MEC's final position concerning what the Company would use to demonstrate cost-effectiveness of proposed programs in future plan filings if the Commission were to allow MEC to continue operating programs under Section 8-408(a) of the Act. In particular, it is not clear whether: (1) MEC would actually file/use an IUB-Order to demonstrate cost-effectiveness of the proposed programs; or whether (2) MEC would perform a cost-effectiveness analysis of its proposed program offerings on behalf of its Illinois customers. Confirmation of MEC's position is crucial as Section 8-408(a) specifies that "The Commission shall approve each program demonstrated to be cost-effective." (220 ILCS 5/8-408(a)) The statute also provides that an Order from the IUB finding a program to be cost-effective, or reasonable, with regard to low-income programs, is "sufficient to demonstrate that the program is cost-effective or reasonable for the utility's customers in Illinois." (Id.) The past four years have demonstrated that a program found to be cost-effective in Iowa is not necessarily cost-effective for MEC's Illinois customers. (Staff Ex. 2.0, p. 8) Thus, relying on an Order from the IUB regarding cost-effectiveness of programs implemented in Iowa is particularly problematic and would allow MEC to continue cost-ineffective programs to the detriment of Illinois ratepayers.

MEC's direct testimony emphasizes that the Commission would have to defer to IUB-Orders going forward (MEC Ex. 1.0, p. 11), implying that MEC intends to use IUB-Orders to demonstrate cost-effectiveness of each program in future Illinois EE plan filings if the Commission were to allow MEC to continue operating programs under Section 8-408. Specifically, MEC's witness Munns states that if the Commission allowed MEC to continue offering programs under Section 8-408 beyond 2012, then MidAmerican would continue to be allowed "to offer a finding by the Iowa Utilities Board as to cost-

effectiveness as sufficient proof of cost-effectiveness in Illinois." (MEC Ex. 1.0, p. 11) Staff disagrees. A showing of cost-effectiveness in Iowa does not automatically render the programs cost-effective for MEC's Illinois customers (Staff Ex. 1.0, p. 9; Staff Ex. 2.0, pp. 3-4) and approval of MEC's programs for an additional year under the Company's theory would be to the detriment of Illinois ratepayers. (Staff Ex. 2.0, p. 2)

MEC demonstrated a number of the programs that have been cost-effective in Iowa, have been cost-ineffective and detrimental to MEC's Illinois ratepayers. Yet MEC objects to the removal of these cost-ineffective programs in Illinois. (MEC Ex. 2.0, p. 10) In other words, MEC appears to take the position that, if the Commission allows the programs to continue to be offered under Section 8-408, then on a going-forward basis, Illinois is compelled to defer to the IUB, and all programs approved in Iowa may be implemented in Illinois regardless of the fact that they may not be cost-effective in Illinois. If this "all-or-nothing" approach is indeed MEC's position, Staff recommends that the Commission take the "nothing" alternative, and decline to authorize MEC to continue its programs under Section 8-408 after December 31, 2012. Therefore, if the Commission determines that subsection (a) is the only EE plan approval provision that may be used under Section 8-408 of the Act, instead of subsection (d) upon which this proceeding was initiated, then to protect the interests of Illinois ratepayers, the Commission should discontinue MEC's EE programs offered under Section 8-408 of the Act. (Staff Ex. 1.0, pp. 3, 11-13)

In direct testimony, MEC asserts that it has demonstrated that its EE programs provide benefits to its Illinois customers. (MEC Ex. 1.0, p. 11) However, MEC has not demonstrated that each of its Illinois EE programs provides net benefits to its Illinois

customers, as required by Section 8-408(a) of the Act. In fact, the past four years have demonstrated that a program projected to be cost-effective in Iowa is not necessarily cost-effective for MEC's Illinois customers, as shown by comparing MEC's 2008 to 2011 cost effectiveness results with its initial Pilot Plan filing containing Iowa cost effectiveness projections. (Staff Ex. 1.0, pp. 8-9) Moreover, despite operating programs in Illinois for the past four years, MEC was unable to provide any measure-level cost-effectiveness analysis. Nevertheless, MEC's witness Diane Munns contends that because the portfolio as a whole has been cost-effective historically, that it is reasonable for the Commission to continue all programs in Illinois regardless of clear data demonstrating the in-effectiveness of some of the programs. (Staff Ex. 2.0, p. 4; MEC Ex. 3.0, pp. 3-4; *Tr.*, August 16, 2012, pp. 7-9) The Company confirmed this position at hearing, arguing that the cost-ineffective programs should be allowed to continue until they could be assessed under "normal economic conditions" because they were "long-term" and negatively affected by the economy. (*Tr.*, August 16, 2012, p. 8) The Company could not provide Staff with any parameters or metrics to determine how "normal economic conditions" might be measured, nor could the Company provide Staff with a date certain for when these conditions might resume and the programs might be deemed cost effective to Illinois customers. (*Tr.*, August 16, 2012, pp. 8-9) As demonstrated by MEC's own witness, the Company does not contest that its position is that it is requesting that the Commission should approve every program in its entire EE portfolio, including those programs with a demonstrated track record of negative net benefits for its Illinois customers. (*Tr.*, August 16, 2012, pp. 7-9) In the event that the Commission adopts the approach, that going-forward, regardless of negative net benefits, the Commission is compelled to defer to IUB

findings and automatically approve all programs, even if these programs are not cost-effective in Illinois, Staff recommends that the Commission decline to authorize MEC to continue its programs offered under Section 8-408 after December 31, 2012.

Staff points out, and MEC does not contend otherwise, that MEC is not restricted to providing EE programs exclusively under Section 8-408 of the Act. Illinois utilities are currently operating EE programs under specific energy efficiency legislation (220 ILCS 5/8-103 and 8/104); although several utilities initiated these EE programs before they were legislatively mandated to do so. (See, Northern Illinois Gas Company, Docket No. 08-0363, Final Order, pp. 156-159, March 25, 2009; Ameren Illinois Company, Docket No. 08-0104, Final Order, October 15, 2008; North Shore Gas Company/Peoples Gas Light and Coke Company, Docket Nos. 07-0241/07-0242 (Cons.), Final Order, pp. 183-184, February 5, 2008) Under Recommendation (1), Staff is not, as MEC asserts, attempting to deny all opportunities for energy savings to the Company's Illinois customers. If the Commission adopts Recommendation (1) then it would be at MEC's discretion as to whether it wants to request Commission approval of EE programs outside of the terms of Section 8-408 of the Act, in order for its customers to receive the future benefits cited by MEC witness Munns. (MEC Ex. 3.0, p. 4)

However, in the Company's rebuttal testimony and in a subsequent data request, MEC appeared to express some willingness to provide cost-effectiveness information for Illinois programs (instead of an IUB-Order referencing cost-effectiveness of Iowa programs) for the Commission's consideration in its review of future plan filings. (Staff Cross Exhibit 1, p. 13; MEC Ex. 3.0, p. 6) In particular, MEC poses the question:

If MidAmerican files an Illinois energy efficiency plan pursuant to section 8-408 of the Act, but does not offer an order from the Iowa Utilities Board as a demonstration of the cost-effectiveness of its filed energy efficiency plan, would Staff agree to use a modified Total Resource Cost test that included a 10% externality factor for electric programs and a 7.5% externality factor to evaluate the cost-effectiveness of the proposed energy efficiency programs?

(Staff Cross Exhibit 1, p. 13) (Emphasis added)

If the Commission declines to adopt Recommendations (1) or (3), and the Commission determines that subsection (a) is the only EE plan approval provision that may be used under Section 8-408 of the Act and the Commission wants to continue the EE program offerings under Section 8-408, then Staff would recommend the following: the Commission allow MEC to continue offering Section 8-408 programs beyond December 31, 2012 contingent on MEC committing to refrain from offering the findings of the IUB to demonstrate cost-effectiveness in all future EE plan proceedings pursuant to Section 8-408 and persuasively demonstrating cost-effectiveness of proposed programs for Illinois. If the Company agrees during this briefing process that it would not use the findings of the IUB to demonstrate cost-effectiveness in all future proceedings, then this may provide a viable option for the Commission to allow the programs to continue.

In its Reply Brief in this proceeding, Staff requests that MEC clarify its position regarding whether it is committed to demonstrating cost-effectiveness of proposed programs for Illinois, and whether it is willing to stipulate that it will forgo reliance on a finding from the IUB regarding cost-effectiveness of Iowa programs in all future plan filings under Section 8-408 of the Act. If MEC commits to this condition, Staff believes this alternative would better protect Illinois ratepayers than if the programs continued under Section 8-408(a) without such condition.

2. Recommendation Alternative (2): In the alternative, Section 8-408 allows the Commission to approve MEC's EE programs for a single year extension in order to provide the General Assembly the opportunity to consider the Commission's Report to the Legislature required pursuant to Section 8-408(d)

Initially, Staff's alternative Recommendation (2) proposed that the Commission could grant MEC an extension limited to one year to allow the General Assembly to consider the Commission's report issued pursuant to 8-408(d), if the Commission interpreted the statute to allow a limited one year extension. Staff no longer believes this recommendation will provide the greatest benefit to Illinois ratepayers. While the Commission is required by Section 8-408(d) to file a written report with the General Assembly explaining the basis for its determination regarding whether MEC's EE programs should be continued beyond calendar year 2012, it is not clear from the plain language of the statute that the General Assembly is required to act upon that report in any way. It is Staff's position that Recommendations (1) and (3), in which the Commission would either deny, or approve MEC's EE plans on a basis other than that specified under Section 8-408(a), respectively, would allow MEC the opportunity to provide cost-effective EE programs in Illinois, while prohibiting the utility from continuing cost-ineffective programs to the detriment of Illinois ratepayers.

3. Recommendation Alternative (3): In the alternative, Section 8-408(d) allows the Commission, in its discretion, to approve MEC's EE plans on a basis other than that specified under subsection (a)

It is Staff's position that Section 8-408(d) of the Act provides the Commission with broad legal authority to monitor the energy efficiency programs offered by utilities pursuant to Section 8-408 and, in determining whether the programs should be continued beyond calendar year 2012, to order the utility to provide any information deemed necessary to accurately evaluate the cost effectiveness of such measures and programs in Illinois. (See Staff Group Cross Exhibit 1) Section 8-408(d) states in pertinent part:

A public utility that offers approved energy efficiency programs in the State may do so through at least December 31, 2012. The Commission shall monitor the performance of the energy efficiency programs and, on or before October 31, 2012, the Commission shall make a determination regarding whether the programs should be continued beyond calendar year 2012.

(220 ILCS 5/8-408(d))

Staff notes that, as an initial matter, neither the Commission nor any court has yet interpreted Section 8-408(d) of the Act. While this issue has not been adjudicated, MEC originally argues that under Section 8-408(a) the Commission should continue to accept a finding by the IUB as to cost-effectiveness as sufficient proof of cost-effectiveness in Illinois.³ (MEC Ex. 1.0 p. 11) In response to the Company's Data Request ("DR") MEC 1.04,⁴ Staff reasoned that from a policy perspective it does not seem to be reasonable or

⁴ Staff Response to DR MEC 1.04 is included in Staff Group Cross Exhibit 1 at pages 4-5.

to be sound policy that the intent of this provision would be to: (1) direct the Commission to monitor the performance of the pilot energy efficiency programs in Illinois; yet then also (2) direct the Commission to ignore the information gleaned through that evaluation in determining how the programs should continue going forward in Illinois, if they should continue at all. To review only the information required by Section 8-408(a), and to allow an order from the IUB finding programs to be cost-effective in Iowa as sufficient evidence to demonstrate that they are cost-effective in Illinois, would allow the utility to continue programs in Illinois that are possibly, or very likely cost-ineffective, without justification and to the detriment of Illinois ratepayers.

Certainly, statutes should be construed as a whole, with all relevant parts considered. *In re Marriage of Kates*, 198 Ill.2d 156, 163; 761 N.E.2d 153, 157 (2001). Therefore, Section 8-408(a) must be read in conjunction with Section 8-408(d) which directs the Commission to make a determination whether the programs should continue. As explained above, to do otherwise would be counterintuitive and contrary to established law.

Further, it is clear that Section 8-408(a), as MEC interprets it, does not provide a utility with an incentive to discontinue cost-ineffective programs prior to the expiration of the plan, if at all. For example, MEC's cost-effectiveness analysis indicated that the Residential New Construction program was not cost-effective in Illinois under any method or test⁵ used to measure cost effectiveness, for any of the 4 years in which the program

⁵ The Societal Test is the test used in Iowa, while the Total Resource Cost ("TRC") test with a societal component is the primary test used to evaluate utility energy efficiency programs in Illinois. (Staff Group Cross Ex. 1)

was implemented. (Staff Ex. 1.0, p. 10; Staff Ex. 2.2; MEC Ex. 2.0, p. 7) Although MEC prepared a set of cost benefit analyses for the programs and provided this information to Staff in January of 2012, MEC did not prepare any cost benefit analysis prior to that time. (*Tr.*, August 16, 2012, p. 21) Without further reporting requirements or review by the Commission that could be imposed under Section 8-408(d), MEC had no incentive to discontinue cost-ineffective programs prior to the expiration of its plan, and further, it had no incentive to determine whether those programs were cost effective prior to that time. It is for these reasons that Staff is reluctant to recommend the Commission continue programs under Section 8-408(a), especially since MEC is unable to provide any detailed plans as to how improvements in cost-effectiveness could be attained. (*Tr.*, August 16, 2012, pp. 10-11) Instead, MEC states that they would review the plans and "factors [it] has going forward." (*Id.*) This does not give Staff the adequate level of information it needs to recommend the programs continue, especially since no data has shown they are cost-effective for Illinois.⁶

Staff recommends that pursuant to Section 8-408(d), the Commission should order MEC to provide the projected level of cost-effectiveness for each EE program and measure that it proposes to offer to its Illinois customers in each EE plan filing before the Commission, in addition to the seven items specified in Section 8-408(a) of the Act. (Staff Ex.1.0, p. 14; Staff Ex. 2.0, pp. 11-12) It is imperative that the Commission be permitted to closely review a utility's EE plans in order to protect Illinois ratepayers from funding measures, programs, or EE plans that provide negative net benefits to ratepayers in

⁶ Staff's recommendation regarding extending these two programs for a single year is discussed later in this testimony.

Illinois. Further, at the suggestion of the Company, MEC should provide justification for including any programs or measures that are projected to be cost-ineffective for Illinois customers in the plan filings for the Commission's consideration. The Commission should also direct MEC to separate out the upstream compact fluorescent lamp ("CFL") component as a separate program in any future EE plan filings. Staff recommends that MEC should be required to report expenses, savings, and cost-effectiveness for the upstream CFL⁷ component of its Small Business and Residential Audit programs as a separate program, given that it has significantly different delivery strategy and implementation costs from the other programs with which it is currently grouped. (Staff Ex 1.0, p. 14) This information would allow for a more transparent evaluation of the programs.

C. Staff Recommendations if the Commission Decides to Extend the Pilot EE Programs for a Sixth Year

This section sets forth Staff's position regarding MEC's request to extend certain programs for one year. This section is only applicable if the Commission rejects Recommendation (1). If Recommendation (1) is rejected, Staff does not oppose extending certain of MEC's programs for a year subject to MEC satisfying all of the conditions set forth below.

⁷ With the ability to differentiate by at least the CFL bulb type and wattages of bulbs sold in MEC's program tracking database and in program reporting. (MEC Revised Ex. 2.2, p. 28)

1. Compliance Filing

If the Commission decides to extend MEC's programs for a year, Staff recommends the Commission direct MEC to submit a compliance filing no later than December 3, 2012, that details information regarding the modified measure mix and program offerings, including, but not limited to, estimated cost-effectiveness, savings, expected participation, and budgets, that are consistent with the Final Order in this proceeding. The compliance filing must persuasively demonstrate cost-effectiveness of the 2013 modified measure mix and program offerings for Illinois. Staff would submit a report detailing whether MEC is in compliance with the Order. (Staff Ex. 2.0, p. 14)

2. Merits of the Programs and Cost-effectiveness

As described earlier in this testimony, MEC received Commission approval pursuant to Section 8-408(a) of the Act to implement pilot EE programs for a period of five years, through at least December 2012 as specified in the legislation. (220 ILCS 5/8-408; Pilot Plan Order) In this proceeding, MEC now requests that the Commission extend the pilot period to six years for all existing programs, which includes some existing programs that MidAmerican's experience has shown are not cost-effective for Illinois customers. (Staff Ex. 2.0, p. 17) In direct testimony, Staff recommended that the Commission permit an extension of some of MEC's EE programs until the end of 2013, based on the individual merits of each program (and in the event the Commission rejects Recommendation (1)). The past four years have demonstrated that a program projected to be cost-effective in Iowa is not necessarily cost-effective for MEC's Illinois customers. Illinois-specific EE program budgets for the administration, marketing, and implementation of the EE programs and the corresponding impact these budgets have on expected program

participation and savings, all of which inevitably differ from Iowa planning assumptions, have a significant impact on the projected level of cost-effectiveness for the Illinois EE programs. (Staff Ex. 1.0, p. 11) Staff testified that projected levels of cost-effectiveness based on Illinois-specific program inputs is one item that the Commission may wish to consider relying on when determining whether a ratepayer-funded EE program should be approved for implementation in Illinois. (Staff Ex. 1.0, pp. 11-12) To aid the Commission in evaluating whether to permit MEC to continue individual programs, Staff thought that it was reasonable to request MEC to provide the projected level of cost-effectiveness for each EE program and measure that it proposes to offer Illinois customers in 2013 in its rebuttal testimony. (Staff Ex. 1.0, pp. 3, 13)

In rebuttal testimony, MEC clarified that it proposes that the Commission approve programs for 2013 estimated to have annual bill impacts for each customer of \$14.74 (Residential Electric), \$18.87 (Residential Gas), \$181.28 (Nonresidential Electric), and \$91.09 (Nonresidential Gas). (MEC Ex. 4.2, pp. 1-2) However, MEC provides no projections of cost-effectiveness for the programs and measures it proposes the Commission approve for implementation in 2013, arguing that it is not reasonable to make decisions on the inclusion and exclusion of measures and programs at the time it is requesting that pilot EE programs be extended for a sixth year. (Staff Ex. 2.0, pp. 6-7; MEC Ex. 3.0, p. 5) Specifically, Ms. Munns states that since the current programs were approved by the IUB and the Commission for the 2008 through 2011 period, MEC has already demonstrated that the current energy efficiency portfolio it offers is cost-effective. (Staff Ex. 2.0, pp. 6-7; MEC Ex. 3.0, pp. 5-6) On this basis, MEC contends that it is not necessary or reasonable to require it to develop the cost-effectiveness information

requested by Staff for the transition year. (Id.) Staff disagrees with MEC's position. Providing projections of cost-effectiveness as a component of petitions for approval of EE plans funded by ratepayers is standard practice in Illinois and is considered best practices in the energy efficiency industry. (220 ILCS 5/8-103; 220 ILCS 5/8-103A; 220 ILCS 5/8-104; 220 ILCS 5/16-111.5B) MEC should be no exception simply because its requested extension is for a single year. In fact, existing Illinois statutes provide that annual cost-effectiveness analysis of measures and programs for a single year be performed on an annual basis prior to utilities being permitted to recover costs associated with these expenditures as part of the proceeding regarding the Illinois Power Agency's procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of the Act. (220 ILCS 5/16-111.5B) Staff recommends that the Commission not deviate from best practices, and direct the Company to perform an acceptable measure-level cost-effectiveness analysis that would be submitted prior to implementation of any programs in Illinois in 2013.

Given that the Company has repeatedly declined to provide any projections for cost-effectiveness of the EE measures and programs it requests additional ratepayer funding for in this proceeding, Staff recommends that as a condition of approval of any program extensions, that the Commission direct MEC to perform a measure-level cost-effectiveness analysis for Illinois to inform the program modifications recommended herein and to submit this in a compliance filing no later than December 3, 2012. (MEC Ex. 3.0, pp. 5-6; Staff Ex. 2.1, pp. 1-2, 4; Staff Ex. 2.0, p. 17) In order for any of the programs to continue beyond December 31, 2012, the compliance filing must persuasively demonstrate in sufficient detail the cost-effectiveness of the 2013 modified measure mix

and program offerings for Illinois. Staff recommends that the Commission permit an extension of some of MEC's EE programs (excluding the Residential New Construction and Residential Equipment programs) until 2013 only under the condition that MEC submits a compliance filing no later than December 3, 2012, that conclusively demonstrates those programs and measures it intends to offer in 2013 are projected to be cost effective in Illinois. (Staff Ex. 1.0, p. 3; Staff Ex. 2.0, p. 11)

a) Residential New Construction and Equipment Programs

Staff opposes extending two programs that have provided negative net benefits to Illinois customers over the 2008-2011 timeframe. Specifically, Staff recommends that the Commission decline to approve an extension of the Residential Equipment and Residential New Construction programs, and order MEC to incorporate certain program modifications as a condition for approval of the remaining programs. In rebuttal testimony, MidAmerican witness Munns states, "There is no reason to believe that its current portfolio will not continue to be cost effective in 2012 and 2013." (MEC Ex. 3.0, p. 5) Similarly, there is no reason to believe programs shown to be cost-ineffective in years past will not continue to be cost-ineffective in 2013. Therefore, Staff recommends the Commission decline to approve continuation of the Residential Equipment and Residential New Construction programs for 2013, as both of these programs have provided negative net benefits to Illinois customers. There is no evidence in this proceeding that demonstrates these programs will improve in 2013 and provide net benefits to Illinois customers. (Staff Ex. 1.0, pp. 7-8) Using the information provided in MEC Ex. 2.1, the net benefits to Illinois customers increase from \$3.9 million to approximately \$5.3 million once these two cost-ineffective programs are excluded from the portfolio. (Staff Ex. 2.0, pp. 8-9)

The Company attempts to justify continuing these cost-ineffective programs for an additional year by championing consistency and arguing that discontinuation would create "customer and trade ally confusion arising from different programs offered by the same utility in the same market area," (MEC Ex. 5.0, p. 4), although when asked, the Company could not point to even one instance of such confusion and confirmed that currently MEC offers different programs in the same market area. (*Tr.*, August 16, 2012, p. 12) It is unclear to Staff how administrative consistency (MEC Ex. 5.0, p. 4) would justify continuing Iowa programs found to be cost-ineffective in Illinois, especially when no evidence has been adduced to indicate this need. MEC's historical data, showing consistent cost-ineffectiveness in some programs, demonstrates that it is reasonable for the Commission to determine that a program providing negative net benefits to Illinois ratepayers, should not be extended for a sixth year at Illinois ratepayers' expense. (Staff Ex. 2.0, p. 7; Staff Ex. 1.0, p. 10)

In response to a data request,⁸ Staff testified that it would not reconsider its recommendation to discontinue the two cost-ineffective programs for the purpose of implementing them in 2013 if MEC provided cost-effective projections in a compliance filing. The Company had ample opportunity in this case to provide projections for the Residential New Construction and Residential Equipment programs. For example, the Residential New Construction program in particular did not receive an evaluation of attribution (*i.e.*, estimating a net-to-gross ratio); and therefore, MEC has had the impact

⁸ MEC DR 1.08 states, in part: "Would Staff reconsider its recommendation to suspend the Residential Equipment and Residential New Construction programs for 2013, if MidAmerican demonstrated that those two programs are projected to be cost effective in Illinois for 2013 in the compliance filing that Staff recommends MidAmerican make no later than December 3, 2012?" (Staff Group Cross Ex. 1, p. 9)

evaluation results for this Illinois program since the time at which MEC filed its direct testimony in this proceeding. Through data requests and in testimony, Staff has requested that MEC provide projections of cost-effectiveness for the energy efficiency programs it proposes to extend for a sixth year in Illinois; and to date, the Company has not provided them. (Staff Ex. 1.0, pp. 7-8; Staff Ex. 2.1, pp. 1-2) The Company also has been unable to provide any measure-level cost-effectiveness analysis for any of the measures MEC proposes to offer in Illinois through the end of 2013. (Staff Ex. 2.1, p. 4) Given the past experience of these programs in Illinois (both provided negative net benefits for MEC's Illinois customers), it is Staff's position that it is unlikely that the programs could be reasonably projected to be cost-effective in 2013 using realistic assumptions in the analysis. (Staff Group Cross Ex. 1, pp. 9-10) It is Staff's position that the Commission should make a decision in its Final Order in this case regarding whether the programs have the potential to continue based on the evidence presented. Since MEC has not presented any evidence indicating these programs are cost-effective, MEC should not be allowed another chance to argue that they are.

Finally, as case law has consistently shown, the Commission must make its decisions based on substantial evidence based in the record. *Bus. and Professional People for the Publ. Interest and Citizens Utility Board v. Ill. Comm. Comm'n*, 665 N.E.2d 553, 556 (1st Dist. 1996), quoting *Citizens Utility Board v. Ill. Comm. Comm'n*, 651 N.E.2d 1089 (1995). The evidence in the record clearly shows that certain programs are not cost-effective for Illinois ratepayers, and this fact is undisputed by MEC. (*Tr.*, August 16, 2012, pp. 7-8)

Based on the reasons presented above, coupled with the absence of evidence in the record to show any change going forward, Staff recommends the Commission require MEC to discontinue offering the Residential Equipment and Residential New Construction programs for 2013 because they have consistently provided negative net benefits to ratepayers and there is no evidence in this proceeding to demonstrate they will improve.

b) Excluding Cost-Ineffective Measures

Staff recommends that the Commission direct MEC to exclude offering incentives for those measures that are found to be cost-ineffective. It is Staff's opinion that the savings from EE are somewhat uncertain. In order to help ensure that the portfolio of programs is cost-effective as a whole (*i.e.*, providing positive net benefits), Staff believes it is prudent to discontinue programs and measures that are not cost-effective; unless there is some extenuating circumstance that would justify the inclusion of the cost-ineffective measure or program, (*e.g.*, a low income program). (Staff Ex. 2.0, p. 11) Since MEC has not demonstrated any specific extenuating circumstance for the Commission's consideration, Staff recommends that as a condition of approval of extending any EE program in 2013, that for 2013 only cost-effective EE measures are allowed to be implemented. Staff also recommends the Commission direct MEC to complete a measure-level cost-effectiveness analysis for Illinois to inform the program modifications recommended herein. (Staff Ex. 2.1, p. 4) Staff recommends that the Commission permit an extension of some of MEC's EE programs (excluding the Residential New Construction and Residential Equipment programs) until 2013 only under the condition that MEC submits a compliance filing no later than December 3, 2012, that conclusively

demonstrates those measures it intends to offer in 2013 are projected to be cost effective in Illinois. (Staff Ex. 1.0, p. 3; Staff Ex. 2.0, p. 11)

c) Codes and Standards

Staff recommends that the Commission direct MEC to exclude offering incentives for measures that do not exceed energy codes and standards. Providing incentives to customers for measures that are considered “replace-on-burnout” and that do not exceed energy codes and standards, results in zero energy savings. Instead, the Company should direct funds toward cost-effective energy saving measures, therein increasing benefits to Illinois ratepayers. (Staff Ex. 2.1, p. 3) The results from the impact evaluation of MEC’s pilot EE programs also include recommendations to update to the latest code. (See, e.g., MEC Revised Ex. 2.2, p. 81 for the Nonresidential Equipment program recommendations) Based on MEC’s response to a data request provided in Staff Ex. 2.1 at page 3, it is Staff’s understanding that MidAmerican agrees to make this type of program modification. (Staff Ex. 2.0, p. 10)

3. CFL Upstream Program

Staff further recommends that the Commission direct MEC to separate out the upstream CFL component from the Residential Audit and Small Business programs in its quarterly reports to the Commission and in any compliance filings in this docket. Staff recommends that MEC should be required to report expenses, savings, and cost-effectiveness for the upstream CFL⁹ component of its Small Business and Residential

⁹ With the ability to differentiate by at least the CFL bulb type and wattages of bulbs sold in MEC’s program tracking database and in program reporting. (MEC Revised Ex. 2.2, p. 28)

Audit programs as a separate program, given that it has significantly different delivery strategy and implementation costs from the other programs with which it is currently grouped. (Staff Ex 1.0, p. 14) This information would allow for a more transparent evaluation of the programs.

III. Conclusion

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

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